

REMARKS

Receipt of the Office Action mailed October 5, 2009 is acknowledged. Claims 6 and 14 are amended in formal regards. In the action, the Examiner restricted the claims under 35 U.S.C. § 121 and 372 to one of the following:

Group I, claim(s) 1-11 and 14-20, drawn to a method of making a water/oil/water emulsion.

Group II, claim(s) 12-13, drawn to the product made by the method of Group I, a water/oil/water emulsion.

Applicants hereby elect Group I, Claims 1-11, 14-20 with traverse. The reason for the traversal is two-fold. First Applicants do not agree with the PTO that this application contains "the groups of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1." Indeed, the PCT division found the application to contain a single invention. The USPTO is not permitted to revisit this already made conclusion. The second reason for the traversal is that the two proffered groups are linked as method and product of the same method. Under the *In re Ochiai* guidelines, these two groups should be allowed together in the same application. Moreover, in *Abbott Labs v. Sandoz*, 566 F.3d 1282 (Fed. Cir. 2009), the Federal Circuit held that the process terms of a product-by-process claim serve as limitations in determining infringement, such that similar products made by a different process do not infringe on the patent. Thus, these two groups are clearly already of the same scope and there is simply no basis for a restriction.

Withdrawal of the restriction and examination of all claims together is respectfully requested.

As this response is filed within the shortened statutory period for response, Applicants believe that no additional fees are due. If any additional fees are required, they may be charged to Deposit Account No. 50-4254, referencing Attorney Docket No. 2901652-000004.

Respectfully submitted,

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Application Serial No.: 10/578,329
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Attorney Docket No.: 2901652-000004

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